1941

File No. Munus Deptt II/41

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legal **DEPARTMENT**

B **BRANCH**

Subject:—

Rules and Notifications
under The
Bombay District Municipal Act. 1901

P.25

File. No Munus Deptt. II/41

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C O N T E N T S .

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Rec'd 22/5/56

Model Election Rules.
Municipalities.
Amendment of--

GOVERNMENT OF BOMBAY.

General Department.

Resolution No. S. 90.

Bombay Castle, 1st July 1941.

RESOLUTION OF GOVERNMENT.

In a recent case it was found that the denomination clause in Form B. (Nomination Paper) mentioned in Rule 13(1) of the Model Election Rules sanctioned in Government Resolution No. S. 90, dated the 3rd February 1939, was capable of two interpretations. In order to remove the ambiguity, Government is pleased to direct that the clause in question should be amended by adding the word "or not" after the word "whether" where it occurs for the second time. The intention underlying this amendment is that every candidate must state whether or not he belongs to the community or communities for which a seat or seats are reserved.

2. The Commissioners of Divisions should be requested to amend the election rules framed for individual Municipalities on the lines of the amendment made in the Model Rules.

By order of the Governor of Bombay,

R.S.MANI,
Deputy Secretary to Government.

To

The Commissioners of Divisions,
All Collectors (with spare copies for distribution to all Municipalities),
The Remembrancer of Legal Affairs,
The Director of Local Self-Government Institute, Bombay
(by ✓ letter).

No. of 1941.

Copy forwarded for information and guidance to

R.I.No. 5940
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Election Rules.

Municipalities.
Amendment of -.

Government of Bombay,
General Department,
Resolution No. S, 90
Bombay Castle, 29th July 1941.

RESOLUTIO, OF GOVERNMENT.

Under rule 13(3) of the model election rules for municipalities the officer appointed under sub-rule (1) of the said rule has to decide all objections which may be made to any nomination. The provision has been found to give rise to unce tainty and controversy as to the exact scope of the inquiry to be made by the said officer for the purpose of the scrutiny of nomination papers. To avoid misunderstanding Government has decided to revise sub-rule (3) of rule 13 of the model election rules printed as an accompaniment to Government Resolution, General Department, No. S90, dated the 3rd February 1939. The revised rule should be as shown in the accompaniment to this Government Resolution.

2. The Commissioners of Divisions should be requested to amend the election rules framed for individual municipalities on the lines of the amended rule.

By order of the Governor of Bombay ,

R.S.PANI,
Deputy Secretary to Government.

To

The Commissioners of Divisions,

All Collectors with spare copies for supply to Municipalities,
The Remembrancer of Legal Affairs,
The Director, Local Self-Government Institute, Bombay (by letter).

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Accompaniment to Government Resolution, General Department, No. S. 90, dated the 29th July 1941.

Model Election Rule No. 13(3) as amended.

13(2)(a).-- The candidates, their nominators and one other person duly authorised in writing by each candidate shall alone be entitled to be present at the time and place fixed for the scrutiny of the nomination papers under Rule 12. The officer appointed under sub-rule (1) shall give such persons reasonable facilities for examining the nomination papers delivered to him under the said sub-rule(1). The said officer, shall examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion after such summary enquiry, if any, as he considers necessary, reject a nomination paper on any of the following grounds;-

(i) that a candidate is not qualified or is disqualified for election under the Act,

(ii) that a proposer or seconder is not qualified for subscribing a nomination paper,

(iii) that there has been any failure to comply with any of the prescribed provisions,

(iv) that the candidate or a proposer or seconder is not identical with the person whose electoral number is given in the nomination paper as the number of such candidate, proposer or seconder, as the case may be,

(v) that the signature of the candidate or of the proposer or seconder is not genuine or has been obtained by fraud.

(b) For the purposes of this sub-rule

(i) the production of a certified copy of an entry made in the municipal election roll shall be conclusive evidence of the

the right of any voter named in that entry to stand for election or to subscribe a nomination paper as the case may be, unless it is proved that the candidate or the proposer or the seconder is disqualified and

(ii) where a person has subscribed whether as proposor or seconder larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which were first received upto the number of vacancies to be filled, shall be deemed to be valid.

(c) Nothing contained in this sub-rule shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a notification paper if the candidte has been duly nominated by means another nomination paper in respect of which no irregularity has been committed.

Election Rules.
Municipalities
Amendment of rules 25 and 32.

GOVERNMENT OF BOMBAY

GENERAL DEPARTMENT.

Resolution No. S. 90.

Bombay Castle, 17th September 1941.

RESOLUTION OF GOVERNMENT.

Rule 25 of the Model Election Rules for municipalities permits the p polling officers to keep books of counterfoild and unused foils of voting papers in their custody till they are destroyed under rule 32. It has been represented to Government that it is desirable that the whole record of election should remain at one place and the responsibility of preserving it carefully should rest upon the President of the Municipality. Governme- nt is, therefore, pleased to direct that Model Election Rule No. 25 should be amended so as to provide that sealed books of counterfoils and unused foils of voting papers should be sent with the ballot boxes to the President or to such other officer as the President may appoint.

Rules Nos. 25and 32 of the Model Election Rules for muninipalities printed as an accompaniment to Government Resolution, General Department, No. S. 90, dated the 3rd February 1939, should be amended as shown in the accompanying statement. The Commissioners of Divisions should be requested to amend the election rules of individual municipalities (including borough municipalities) on the lines of the amendments made in the model r ules.

By order of the Governor of Bombay,

R.S.MANI,
Deputy Secretary to Government

G.R., No.S. 90 G.D., dated the 17th September 1941.

To

All Commissioners of Divisions,
All Collector (with spare copies for distribution t municipalites)
The Remembrancer of Legal Affairs,
The Director, Local Self Government Institute, Bombay(by letter).

No. of 1941

Copy forwarded for information and guidance to

Accompaniment to Government Resolution, General Department, No.S.90 dated the 17th September 1941.

Amendments to Model Election Rules for municipalities.

Rule 25----- For the last sentence in the rule, the fol owing shall be substituted:-

"The polling officer shall seal up the book of counterfoils and unu sed foils and deliver it with the ballot box for safe custody to the Pre President or some one ap ointed by the president to take charge of it."

In Rule 32 the words "in the polling offcer's custody" shall be deleted.

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Office of the R.L.A.

It is presumed that the intention of the G.D. is to recommend the model rules for adoption by the district and borough Municipalities only. The model rules have, therefore, been examined from the legal point of view with reference only to the provisions of the Bombay District Municipal Act, 1901 and the Bombay Municipal Boroughs Act, 1925.

2. Section 48(1)(a) and (b)(i) of the Bombay District Municipal Act, 1925, and section 61(1)(a) and (b)(i) of the Bombay Municipal Boroughs Act empower the Municipalities to make by-laws for the purposes mentioned therein. It will be necessary, therefore, to substitute the expression "by-law or by-laws" for the expression "rule or rules" in the heading and in the rules throughout.

3. There are two kinds of slaughter houses referred to in the Municipal Acts referred to above and the model rules in question, namely, (1) public slaughter-houses i.e. slaughter-houses established by the Municipality itself (see sections 173 and 175 of the Bombay Municipal Boroughs Act and sections 140 and 141 of the Bombay District Municipal Act) and (2) private slaughter-houses i.e. places licensed by the Municipality to be used as slaughter-houses. The model rules in question cannot all be made applicable in respect of both the public as well as private slaughter-houses. G.D. should consider whether it would not be desirable

to show separately the model rules which would apply only in respect of public slaughter-houses, those which would apply only in respect of the private slaughter-houses and those which would apply in respect of both the public and the private slaughter-houses. G.D. should also consider whether it would not be desirable to prescribe several provisions now contained in the rules and applying to private slaughter-houses as conditions of licenses granted in respect of such slaughter-houses

4. Rule 2:-(a) clause(i): The word "whether" occurring before the word "ram" appears to be superfluous and may be deleted. (b) clauses (iii), (vi),(vii) and (ix) may be amended as shown in pencil on p.3 (c) Clause /(v): It does not appear that the definition of the expression "condemned" has been scrutinized by G.D. for the definition is obviously neither clear nor suitable. It may be altered as follows:-

"Condemned carcass" or"condemned part" means any carcass or part of a carcass which is marked "condemned" under by-law 71(g).

An organ is a part of a carcass. It is therefore not necessary to define separately "condemned organ"

(d) The definition of the expression "local authority" does not appear to be necessary and may be deleted. The word "municipality" may be used throughout the by-laws for the expression "local authority"

(e) clauses (x),(xi) and (xvii),(1) The municipal officers can only be appointed by

the municipality concerned. A municipality cannot also require a Government servant to perform any duties on its behalf.

The words "or a local Government to act in that capacity" may therefore be deleted from the definitions o the expressions "Medical Officer of Health" and "Veterinary Surgeon".

(ii) The Municipal Boroughs Act uses the expression "Health Officer". See section 34(5)(a). This expression may therefore be substituted for the expression "Medical Officer of Health".

(iii) The definitions of these three expressions may be amended as shown in pencil on p.3

(iv) The expressions "nuisance" and "public street" are defined in the Municipal Acts and it is desirable that in the by-laws made under these Acts, the expressions should have the same meanings as are given to them in the Acts. These definitions may therefore be deleted and a following new clause may be added at the end in this by-law:-

"Words and expressions not defined but used in these by-laws shall have the meanings assigned to them in the Bombay Municipal Boroughs Act, 1925" Bombay District Municipal Act, 1901.

5. Rule 2: To make the intention clear the rule may be recast on the lines suggested by D.S., C.D., at p-72 ante as under:-

"2. In any area or locality in which there are one or more public slaughter-houses,—

(a) a license for the establishment of any new private slaughter-house shall be refused if the provisions of by-laws..... .....have not been complied with in respect of such ~~xx~~ slaughter-house, and

(b) a license granted for any private slaughter-house shall be suspended or withdrawn if the provisions of by-laws..... are not complied with in respect of such slaughter-house."

G.D. should specify all the by-laws for non-compliance with the provisions of which licenses may be (a) refused and (b) ~~xx~~ suspended or withdrawn.

6. Rules 3-4 : The power to establish slaughter-houses is given to the Municipalities by sections 173 and 175 ~~amdx~~ of the Boroughs Act and sections 140 and 141 of the District Municipal Act. These rules are therefore unnecessary and should be deleted.

7. Rule 15A : The new rule 15A suggested by G.D. at p. 56 ante provides that all appliances and furniture in the slaughter-house shall be oil painted periodically. The expression "periodically" is vague. It will be necessary to mention a fixed period in the by-laws to be made by each municipality. For the word "periodically" the following may be substituted, namely:-

"once in every....."

The period may be left blank to be filled in by each municipality. In this connection attention of G.D. is invited to rule 42.

8. Rule 19 This may be revised as

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follows in view of the provisions of section 139 of District Municipal Act and section 172 of Boroughs Act:-

"No place , oth r than a public municipal** slaughter-house , shall be used as a slaughter-house except under and in accordance with the conditions of a license from the Municipality. Standing Commit ee***

**To be used in the case of by- laws made under the Boroughs Act.

9. Rule 20: This rule provid s that no person shall slaught r or cause or permit to be slaughtered at any place other than a public slaugher-house or premises licensed for the purpose of slaugtering any animal etc. There is no provision in the Bombay District Municipal Act or the Bombay Municipal boroughs Act empowering the making of a by-law to this effect. Section 48(1)(a) of the ombay District Municipal Act provides for power to make by-laws for the regulation of slaughter-houses etc. Section 48(1)(b)(i) empowers a municipality to make by-laws prescribing the conditions on or subject to which licenses may be granted etc. in respect of any place for the purpose of slaughtering. The provisions contained in section 51(1)(a) and (b)(i) of the Bombay Municipal Boroughs Act are similar. The rule in question, therefore, is ultra vires of the Act (cf. para.3 of R.L.A's opinion No. 3101, dated 11th August 1939). The main object in view can be achieved by revising rule 19 as suggested above. Rule. Rule 20 may then be deleted.

1 for use of as a slaughter house. These provisions dont empower the making of by-laws prohibiting the use of any place

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10. Rule 21:- This rule provides that every person who may apply to the local authority for a license for the erection, use and occupation of any premises as a slaughter house shall furnish in Form A appened to these rules a true statement of the particulars therein required to be specified. Section 61(1)(b)(i) of the Bombay Municipal Boroughs Act and section 48(1)(b)(i) of the Bombay District Municipal Act refer to licenses for the use only of any place as a slaughter-house Licenses are not to be granted for the erection or occupation of any premises as a slaughter-house. The reference to these expressions may, therefore, be omitted from this rule and the Form A.

11. Rules 22 to 24 and Form B: (a) In view of the remarks in para 10 above against rule 21, the reference to licenses to erect premises for use as a slaughter-house is not in order and may be deleted.

(b) Under the Municipal Boroughs Act, such licenses are to be granted by the Standing Committee.

(c) It is presumed that the intention is that licenses should be issued in the form prescribed by the municipality. The words "or to the like effect" in the last line of by-law 22 may therefore be deleted.

(d) In view of rule 24, the words "for a period of every 12 months" in rule 23 appear to be unnecessary and may be deleted from this rule.

12. Rule 34: This rule is ultra vires of the provisions of the Municipal Acts and should be deleted .

13. Rule 41(d): The provision in this claus that the skin etc. shall become the property of the local authority is not in order. The claus may be revised accordingly.

14. Rule 44: The latter part of this rule which provides for the removal of persons creating disturbances cannot properly be the subject of a by-law. It may therefore be deleted.

15. Rule 45: This rule provides, inter alia, that a periodical inspection of butchers and flayers shall be obligatory. The provision is vague. It is not clear when and by whom the periodical inspection is to be made. It may be pointed out that if the intention is that such persons should compulsorily submit themselves to a medical examination by any authority, such a provision will not be infra vires of the Municipal Acts.

The expression "flayer" has not been defined in the rules and would presumably not include the slaughterman. It is I think necessary to subject the slaughterman, along with the butcher and flayer to medicpl inspection. Flayer would it seems come within the definition of slaughterman. If so, the word "slaughterman" may be substituted for the words "flayer" in this rule.

16. Rule48 : The rates of fees to be levied will have to be specified.

17. Rule 68: In view of the provisions of clause (b) of sub-section (1) of section 48 and section 139 of the District Municipal Act, the words "in any market, slaughter-house or a shop licensed for the sale of meat" may be inserted after the words "auctioned or sold" in this rule when it is applied Municipalities Governed by this Act.

18, Rules 72 and 73: Attention is invited to section 142 of the Bombay District Municipal Act, 1901 and section 178 of the Bombay Municipal Boroughs Act, 1925. The persons who can order the destruction of unwholesome articles which have been seized are specified in these sections and the Meat Inspector is not one of them. Consequently the provision in rule 72 that the Meat Inspector may also order the destruction of condemned carcasses or parts thereof is not in order.

19. Rules 74 to 76: It does not appear that these rules would fall either under clause (a),(b),(m) or (u) of sub-section (1) of section 18 of the District Municipal Act or under clause (a),(b),(r) or (ee) of sub-section (1) of section 61 of the Municipal Boroughs Act. There is also no other provision in these Acts under which these rules can be made. Those rules do not therefore appear to be legally in order.

20 Rule 77: The rule may be amended as shown at page 16 ante

21. Rule 82: //In view of the provisions of clause (b) of sub-section (1) of section 48 of the Bombay District Municipal Act, the first three lines of this rule in its application to municiapilities governed by the District Municipal Act may be altered as follows:-

"The occupier of any room which is used as a shop for the sale of meat and any person who knowingly lets any room etc."

22. Rules 88 to 90: There does not appear to be any provision in either of the two Municipal Acts under which such rules can be made. These rules may therefore be

deleted. Attention is invited to section 142 of the District Municipal Act and section 176 of the Municipal Act Boroughs act which give the necessary powers for seizure and destruction of unwholesome meat.

23. Rule 23: In the case of by-laws made under the Bombay District Municipal Act by a municipality, other than a City Municipality, the approval of the Commissioner and not the Provincial Government as provided in this rule will be necessary.

24. Form B: It would be desirable to state in this form that the license is granted subject to the provisions of the by-laws and may be suspended or withdrawn for non-compliance with the provisions of any of the by-laws.

25. Subject to the remarks made above the model rules appear to be legally in order. The wording and language of several rules are however defective. G.D. is therefore requested to scrutinize each rule and see whether it is suitable.

O.C. P.N.M.

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Remembrancer of Legal Affairs.

U.R. to G.D.No. 11103 dated 23-12-41.

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